

BOARD OF ESTIMATES POLICY REGARDING THE USE OF DESIGN-BUILD PROJECT DELIVERY

SECTION I: PURPOSE

The purpose of this policy, which may be used by any agency responsible for the construction of public works, is to establish guidelines for the use of the design-build project delivery method. Authority for the use of design-build is established by Article VI, Section 11(h)(1)(ii) of the Baltimore City Charter, which provides that the Board of Estimates may award a contract “..in the case of Requests for Proposals to the highest scoring responsive and responsible bidder...”

SECTION II: DEFINITIONS

The following definitions are provided to assist in implementing this policy.

A. Affiliate means:

1. Any Person/entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Principal Participant; or
2. Any Person/entity for which 10% or more of the equity interest in such Person/entity is held directly or indirectly, beneficially or of record, by (1) the Proposer, (2) any Principal Participant, or (3) any Affiliate under part (A) of this definition.

B. Alternative Technical Concept (ATC) - any concept that is proposed as an alternative to the Base Technical Concept. ATCs include any project alignment other than described in the Request for Proposal and any other modification of the project as defined in the requirements of the scope of work.

C. Best and Final Offer (BAFO) – is a proposal requested by the contracting agency when the evaluation team believes that the price proposal could or should be better, or when some elements of the technical proposal require clarification.

D. Base Technical Concept (BTC) -- the design concept and performance requirements set forth in the Scope of Work and in other parts of the Request for Proposal for the work to be designed and constructed.

E. Best Value (BV) -- a selection process based on a combination of value and price offered by a Proposer. The process gives credit for factors defined in the Design Build Procurement Plan and Request For Proposals, which may include but are not limited to design excellence, functional efficiency, team experience, construction methodology, and contract time, and weighs these factors relative to the price proposal of the Proposer.

- F. City -- the City of Baltimore
- G. City's Project Manager -- the person representing the City and having direct supervision of the administration and execution of the Contract under the direction of the Department Director.
- H. Confidential Meeting – As allowed by Section V and VIII, under certain circumstances it may be in the best interest of the City to hold a confidential meeting with one or more of the Proposers individually. Attendance shall be limited to members of the Proposal Evaluation Team and designated technical resource members as deemed necessary by the Proposal Evaluation Team.
- I. Conceptual Plans -- preliminary plans, developed to the 30% stage of completion level that convey the basic intent and parameters of the project. The design may need to be developed by the Preliminary Design Team to a greater level (>30%) of detail to establish, for example, right-of-way needs, utility relocations and environmental impacts.
- J. Contracting Agency – is the department responsible for the particular public work to be constructed.
- K. Contract Specifications (CS) - A part of the Request for Proposals or Invitation for Bids. The Contract Provisions; General Provisions; Terms and Conditions; Special Provisions and Special Provision Inserts; Miscellaneous Contract Details; and the Proposal Form Packet. Appendices are provided, when appropriate, to include such items as Soil, Stormwater Management and Structural Boring Logs, Traffic / Accident Data, Test Pit Logs, and other information determined to be necessary or desired to be provided to the Design Build Contractor.
- L. Control - means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise, when considered in the context of Section X.
- M. Designer -- a Principal Participant, Specialty Subcontractor, or in-house designer that leads the team furnishing or performing the design of the project.
- N. Design-Build (D-B) -- a project delivery methodology by which the City contracts with an entity that has responsibility for the design and construction of the PROJECT under a single contract with the City.
- O. Design-Builder -- the entity selected pursuant to the Request for Proposals that enters into the Contract with Baltimore City to design and construct the PROJECT.
- P. Design-Build Executive Committee – includes the Directors of the Departments of Transportation, Public Works and General Services, the Chief of the Minority and Women's Business Opportunity Office, and the City Solicitor. The Chairman of the Executive Committee shall be appointed by the Mayor from among the members
- Q. Design-Build Procurement Plan (DBPP) – the project-specific plan developed by the Contracting Agency, approved by the Design Build Executive Committee and

- recommended to the Board of Estimates by virtue of the Request for Proposal requirements that govern the procurement method to be used on the project.
- R. Invitation for Bids (IFB) - a written solicitation issued by the City to solicit proposals for design and construction services in a one step, low bid design-build procurement process.
 - S. Preliminary Design Team (PDT) -- In-house and/or consultant staff responsible for the development of the project's Advertisement Package – Conceptual Plans, Request For Proposals, and Contract Specifications.
 - T. Principal Participant -- any of the following entities:
 - A) The Proposer;
 - B) If the Proposer is a joint venture, partnership, limited liability company, or other form of association, any joint venture, partner, or member; and/or
 - C) Any Person holding (directly or indirectly) a 15% or greater interest in the Proposer.
 - U. Project -- the improvements to be designed and constructed by the Design-Builder and all other Work product to be provided by the Design-Builder in accordance with the Contract Documents.
 - V. Project Management Team (PMT) -- the representatives of the CITY lead by the CITY Project Manager assigned to the project.
 - W. Proposal Evaluation Team (PET) -- the representatives of the CITY responsible for proposal evaluation. The Proposal Evaluation Team consists of not more than 5 members, at least one of whom must be from a City agency other than the procuring agency. In addition, the Proposal Evaluation Team may use non-voting technical resource members who can provide expertise in areas including, but not limited to: Contract Management, Engineering, Construction, Procurement, Legal or any other area that requires specialized knowledge and expertise.
 - X. Proposer – an entity submitting a Proposal or Statement of Qualifications for the project in response to the Request for Proposals.
 - Y. Reduced Candidate List (RCL) -- the list of those Proposers that have submitted SOQs, and that the City determines, through evaluation in accordance with the DBPP are the most highly qualified proposers to perform the Work.
 - Z. Request for Proposals (RFP) -- a written solicitation issued by the City to solicit proposals for design and construction services in a two step design-build procurement process. The RFP includes: Step One: Request for Qualifications and Step Two: Request for Technical and Price Proposals.
 - AA. Request for Qualifications (RFQ) -- the first step in the two step RFP process, the RFQ is the written solicitation issued by the City seeking SOQs to be used to identify and create a Reduced Candidate List (RCL) of the most highly qualified D-B Proposers to receive the Step Two: Request for Technical and Price Proposals for the PROJECT.

BB. Statement of Qualifications (SOQ) -- the information prepared and submitted by a Proposer in response to the RFQ.

CC. Work - the furnishing of all labor, material, equipment, and other incidentals necessary or convenient to the successful completion of the PROJECT and the carrying out of all the duties and obligations imposed by the Contract.

Section III: Types of Projects Suitable for Design-Build Project Delivery

1. The following categories are types of projects that generally may be suited for Design-Build contracts:
 - a. Emergency and repair projects
 - b. Projects directly supporting economic development/enhancement
 - c. Projects using specialty or innovative designs and construction methods or techniques
 - d. Projects to maximize the use of available funding (i.e. Federal, Bonds, , etc.)
 - e. Projects deemed by the City to have expedited scheduling requirements
 - f. Projects that do not lend themselves to normal Design-Bid-Build procedures
2. Paragraph 1 of this Section is not intended to limit the decision making authority of the Design-Build Executive Committee.

Section IV: Establishing the Use of Design-Build Project Delivery

1. When a Contracting Agency seeks to use the Design-Build project delivery method for a project, the contracting agency shall:
 - a. As early as reasonable in the project development phase, and at a minimum prior to achieving 30% design approvals, request evaluation by the Design-Build Executive Committee of the Contracting Agency's Design Build Procurement Plan.
 - b. In advance of meeting with the Design-Build Executive Committee, provide to the members of the Design-Build Executive Committee the Design-Build Procurement Plan containing, at a minimum, the following items:
 - i. Project Description and Scope of WorkProject budget and funding sources
 - ii. Project Management Team, including project manager/engineer, construction manager and any consultants retained for service on the project.

- iii. Project Management/Oversight Plan
- iv. Project Schedule
- v. Project stakeholders and coordination requirements
- vi. Project right-of-way requirement and status of right-of-way acquisition, if any
- vii. Project requirements for utility and railroad coordination, if any, and identification of responsibility for obtaining utility and railroad approvals
- viii. Required local, state or federal environmental approvals and the status of each, if required, as well as an identification of responsibility for obtaining environmental approvals
- ix. Reasons for using Design-Build method of project delivery
- x. Analysis of project risks and risk mitigation plans
- xi. Proposed Procurement methodology (see Section V) and scoring plan, including whether project construction cost or project life-cycle cost shall be the basis for scoring of the cost proposal.
- xii. Preliminary identification of Proposal Evaluation Team members and non-voting technical resource members, who shall remain confidential
- xiii. Proposed methods for cost review/cost containment on change orders
- xiv. Requested stipend amount and number of stipends to be paid, if any
- xv. Proposed use of Alternative Technical Concepts with evaluation plan, if appropriate
- xvi. Proposed MBE/WBE or DBE goals, as established by the Minority/Women's Business Opportunity Office
- xvii. Request for waiver of Section X of this policy, if any.
- xviii. Additional information which may be useful to the Executive Committee, if any

2. Upon receipt of the Design-Build Procurement Plan from the Contracting Agency, the Design-Build Executive Committee shall convene and consider the appropriateness of the Contracting Agency request relative to the best interests of the City. The Design-

Build Executive Committee may:

- a. Approve the request of the Contracting Agency; or,
 - b. Approve the request of the Contracting Agency, subject to certain modifications of the project plan; or,
 - c. Reject the request of the Contracting Agency; or,
 - d. Defer a decision on the request pending further information
3. In making its recommendation, the Design-Build Executive Committee shall consider:
 - a. The Design-Build Procurement Plan submitted by the contracting agency.
 - b. The capacity of the Contracting Agency to suitably manage a project under the design-build project delivery method.
 - c. Whether the project is of sufficient size and technical complexity to warrant an alternative method of project delivery.
 - d. The availability and suitability of local engineering and construction firms to engage in design-build project delivery vs. design-bid-build project delivery.
4. A decision of the Design-Build Executive Committee to approve a request shall be unanimous among the members participating in the decision. Should the Design-Build Executive Committee approve the request of the Contracting Agency, the Contracting Agency may proceed with developing the Request For Proposals in accordance with the Design-Build Procurement Plan.
5. Proposal scoring for Best Value procurements shall be calculated using points and may include pass/fail factors for mandatory requirements. The Design-Build Executive Committee shall not approve any scoring methodology in which the value of the price proposal is less than 50%.
6. Except when the Director of Finance has declared that an emergency pursuant to Section 11(e) of the City Charter, the Design-Build Executive Committee may not recommend to the Board of Estimates any duration for the advertisement of the

Invitation for Bids which is less than 42 calendar days.

Section V: Authorized Design-Build Procurement Methodologies

The Design-Build Executive Committee may approve and recommend to the Board of Estimates only the following project selection methodologies:

1. One-Step Low-Bid:

- a. Upon approval of the Board of Estimates to advertise the Invitation for Bids, the Board shall open bids and award the contract, as an entirety, to the lowest responsive and responsible bidder.

2. Two-Step, Low-Bid

- a. Upon approval of the Board of Estimates to advertise the RFP: Step One Request for Qualifications , the Board shall receive and refer all Proposers Statement of Qualifications to the Contracting Agency for evaluation.
- b. The Proposal Evaluation Team shall evaluate the Statement of Qualifications and establish the Reduced Candidate List pursuant to the Design Build Procurement Plan. The Reduced Candidate List shall be limited to no more than five Proposers.
- c. The Contracting Agency shall request that the Board of Estimates notify the Proposers included in the Reduced Candidate List and provide the RFP: Step Two Technical and Price Proposal to only the Reduced Candidate List.
- d. Upon receipt of the Technical and Price Proposals from the Reduced Candidate List, the Board of Estimates shall receive and refer the Technical Proposal only to the Contracting Agency.
- e. The Proposal Evaluation Team shall evaluate the Technical Proposal on a pass/fail basis. The Board of Estimates shall then open the Price Proposals of

those Proposers having received a passing Technical Proposal rating;
Proposers receiving a failing rating on the Technical Proposal shall have their
Price Proposals returned unopened.

- f. The Board of Estimates shall award the contract, as an entirety, to the lowest responsive and responsible bidder.

3. Best Value

- a. Upon approval of the Board of Estimates to advertise the RFP: Step One Request for Qualifications, the Board shall receive and refer the Statement of Qualifications by all Proposers to the Contracting Agency for evaluation.
- b. The Proposal Evaluation Team shall evaluate the Statement of Qualifications and establish the Reduced Candidate List pursuant to the Design Build Procurement Plan. The reduced candidate list shall be limited to no more than 5 Proposers.
- c. The Contracting Agency shall request that the Board of Estimates notify the Proposers of the Reduced Candidate List and provide the RFP: Step Two Technical and Price Proposal to only the Reduced Candidate List.
- d. Upon receipt of the Technical and Price Proposals from the Reduced Candidate List, the Board of Estimates shall receive and refer the Technical Proposal only to the Contracting Agency.
- e. The Proposal Evaluation Team shall evaluate the Technical Proposal and establish a technical score pursuant to the DBPP.
- f. After evaluation and scoring of the Technical Proposals is complete, the Board of Estimates shall refer the Price Proposals to the Contracting Agency for scoring. The Project Evaluation Team shall combine the Technical and Price scores to establish the total score for each Proposal. If the Project Evaluation Team decides not to solicit a Best and Final Offer pursuant to Paragraph G of this Section, the Contracting Agency shall recommend to the Board of Estimates award of the contract to the highest scoring Proposer.

- g. Proposers scoring at least 70% of the total score and within 10% of the top scoring proposer, including the top scoring proposer, shall be considered within the Competitive Range. The Proposal Evaluation Team may, at its sole discretion, request Proposers within the Competitive Range :
 - i. Further develop or refine certain concepts into a Best and Final Offer.
 - ii. Meet with the Proposal Evaluation Team in a Confidential Meeting to discuss the Proposal, its strengths and weaknesses, and any other information necessary for the proposer to develop a Best and Final Offer.
- h. All Proposers within the Competitive Range shall be afforded equal opportunity to submit a Best and Final Offer, but are not required to do so. If the Competitive Range includes only one proposer, or if the price proposals for all proposers within the Competitive Range exceed the available funding, the Proposal Evaluation Team may, at its sole discretion, expand the Competitive Range to include additional Proposers. Written requests for Best and Final Offers shall include specific instruction for the Best and Final Offer submittals, and shall require submittal to the Board of Estimates on or before an established date.
- i. Best and Final Offer submittals received by the Board of Estimates shall be referred to the Contracting Agency in the same manner as the initial Technical and Price Proposals. The Proposal Evaluation Team shall score the Best and Final Offer Proposals anew in the same manner at the initial Technical and Price Proposals. Scoring of the Best and Final Offer replaces the scoring of the initial offer, except that should a Proposer fail to submit a Best and Final Offer, or submit a non-responsive Best and Final Offer, the Initial Technical and Price Proposal for that Proposer shall remain under consideration. Proposers that were outside the initial Competitive Range and from whom a Best and Final Offer was not solicited are not considered.
- j. Scoring of Technical and Price Proposals, whether for initial scoring or Best and Final Offer scoring, shall be as follows:

- i. Price Points awarded = Lowest Responsive price of all Proposers divided by the Proposer's price, multiplied by the percentage weight for the price proposal as designated in the approved Design Build Procurement Plan scoring plan.

For example, the lowest price proposal is \$12,200,000. Another Proposer submits a price proposal of \$12,700,000. The price proposal is weighted at 60% and technical proposal is weighted at 40%.

						Price Weight			Price Points
Low Proposer	\$ 12,200,000	=	0.961	X	60.00%	=	57.66		
Proposer Scored	\$ 12,700,000								

- ii. Technical Points awarded = Proposer Technical Points as scored by the Proposal Evaluation Team, divided by maximum possible Technical Points, multiplied by the percentage weight for the technical proposal as designed in the approved Design Build Procurement Plan scoring plan.

						Technical Weight			Technical Points
Scored Points	71	=	0.888	X	40.00%	=	35.52		
Max. Possible	80								

- iii. The final score of each Proposer shall equal the number of points scored on the Technical Proposal plus the number of points scored on the Price Proposal.
- k. The Contracting Agency shall recommend to the Board of Estimates award of the contract to the highest scoring Proposer as calculated in Paragraph (j) of this Section.
- l. Should the Project Evaluation Team determine that only one Proposer has submitted a Proposal within the competitive range, the Project Evaluation

Team may conduct limited negotiations with the Proposer. Said negotiations shall be limited to clarification of technical approach to the project, schedule, and cost. The Project Evaluation Team may not negotiate with the Proposer on any item which would materially affect the Scope of Work such that a re-issuance of the RFP would be warranted.

4. For the purpose of this section, the initial offer submitted to the Board of Estimates shall satisfy the 90-day maximum period allowable under Article VI, Section 11(c) of the City Charter.

Section VI: Payment of Stipends

1. For Two Step Procurements, The Design Build Procurement Plan approved by the Design Build Executive Committee and recommended to the Board of Estimates may include payment of a stipend to Proposers on the Reduced Candidate List who submit a responsive and responsible Technical and Price Proposal.
2. Notwithstanding Paragraph (1) of this Section, a stipend shall not be paid to the Proposer awarded the contract.
3. With its proposals, a Proposer must submit a plan for how the stipend will be divided among the Proposer and those subconsultants and subcontractors participating in the development of the Proposal. Nothing in this paragraph shall require that the Principal Participant make payment to any subconsultant or subcontractor; however, the stipend plan shall be agreed to in writing by all subconsultants and subcontractors participating in the development of the Proposal in order for stipend payment to be made to the Proposer.
4. No stipend for any one Proposer may exceed $2/10^{\text{th}}$ of one percent (0.2%) of the City engineer's estimated project's total design and construction cost.

5. In order to receive payment of the stipend, the Proposer shall submit such supporting documentation as may be required by the Contracting Agency in order to establish that the work performed in developing the Proposal is equal to the value of the stipend.
6. The terms and conditions of the stipend agreement and distribution plan shall be included in the RFP and the stipend agreement shall be executed with the submission of the Proposal. The payment of the stipend shall be conditioned on the right to use any ideas or information contained in the Proposal in connection with any Contract awarded for the project, or in connection with any subsequent procurement, subject to the obligation to pay a stipend. Proposers shall have the option to waive the stipend payment, and the agreement shall provide for such indication. Waiver of stipend payment shall have no bearing on the responsiveness of the Proposal.

SECTION VII: Participation by Minority and Women-Owned Businesses

1. It is the policy of the Board of Estimates that all current policies relating to the use of minority and women-owned business or disadvantaged business enterprises, as may be required on certain federally funded projects, be applied to contracts procured using the Design-Build project delivery method.
2. In establishing the MBE/WBE goals, MWBOO shall set separate goals for the design and construction elements of the project. It is recognized that changes in MBE/WBE subcontractors may be required as the final design and construction process moves ahead. It is the City's intent to approve such changes provided that prequalification standards have been met and that achievement of the overall project MBE/WBE goals is unaffected by the change in subcontractor(s).
3. Upon requesting that a DBE goal be established for certain federally-funded projects, the Contracting Agency shall request that the goal-setting agency establish separate goals for the design and construction elements of the project.

SECTION VIII: Alternate Technical Concepts

1. If included in the approved Design Build Procurement Plan, the Request for Proposals may allow Proposers to incorporate innovative Alternative Technical Concepts (ATCs) into their proposals that differ from the Base Technical Concept provided in the RFP. The RFP shall include specific information regarding the submittal format, acceptable time period and any limitations on acceptable subject matter for ATC submission.
2. ATCs received by the Board of Estimates shall be referred to the Contracting Agency for review by the Proposal Evaluation Team. ATCs shall be considered confidential. The handling, review and approval processes for the ATC's by the City shall be conducted with the utmost sensitivity. Following review, the Contracting Agency shall respond to the Proposer in one of the following manners:
 - a. The ATC is approved as submitted.
 - b. The ATC may be resubmitted for approval subject to certain modifications.
 - c. The ATC is not approved and shall not be resubmitted.
 - d. A Confidential Meeting is requested to further clarify and discuss the ATC. Discussions at said meeting shall be strictly and narrowly contained to the details of the ATC and shall not discuss any other matters. After the Confidential Meeting, the Contracting Agency shall respond in writing to the Proposer in accordance with a, b or c above.
3. Approved ATC's may be included in the project at the option of the Proposer. The Proposer shall indicate within the Proposal which approved ATC's are being used, and these ATC's shall become part of the Contract Specifications.

SECTION IX: Change Orders for Design and Construction

All change orders for a Design-Build project shall be approved by the Department of Audits, Change Order Review Committee and the Board of Estimates prior to advising the contractor to proceed with the change.

SECTION X: Prequalification, Limitations on Participation by Certain Firms, and Conflicts of Interest

1. All Proposers participating on a Design-Build proposal shall be pre-qualified by the Office of Boards and Commissions in accordance with the policies in effect at the time of the proposal. At a minimum, the Principal Participant(s) and all named design firms and design subconsultants shall be prequalified as of the date of RFP Statement of Qualifications (if required) or Technical and Price Proposal submission. Provided that all member firms of a joint venture are individually prequalified, the joint venture entity is not required to be pre-qualified.
2. Any Person that has or will receive monetary compensation as a consultant or subconsultant under a contract with the City to develop the conceptual plan, RFP, and/or has been retained to review the City's proposed plans for this procurement, or any Person that is the employer of an individual that has been so retained, may not submit a Proposal for this procurement or be part of any Proposer submitting a proposal. The violation of this paragraph shall result in a Proposer not being considered responsible in the submission of its bid or proposal.
3. Participation by any of the following Persons on more than one Proposal will be deemed an organizational conflict of interest disqualifying the affected Proposers:
 - i. Principal Participant, Designer, subconsultant responsible for performing more than 15% of the design
 - ii. Subcontractor responsible for performing more than 20% of the construction
 - iii. an Affiliate of any such Person in i. and ii.

All Proposers affected by the conflict of interest will be disqualified, even if a Proposer is unaware of the conflict of interest, or if the Person or Affiliate causing the conflict is intended to have a different or lesser role than that described above. The violation of this paragraph shall result in a Proposer not being considered responsible in the submission of its bid or proposal.

4. By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate

and full written disclosure to the City that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the City may, at its discretion, cancel the Contract. If the Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the City, the City may terminate the Contract for default.

5. Where it is found that the requirements of paragraph 2 or 3 of this Section would unreasonably restrict competition or limit the participation of specialty consultants, subconsultants, suppliers or construction firms, the contracting agency with approval from the Design Build Executive Committee may request the Board of Estimates to waive the relevant portions of this Section. Any such waiver shall be prominently indicated in the RFP.

SECTION XI: CONFLICT WITH STATE OR FEDERAL LAWS AND REGULATIONS

Where a project is governed by state or federal law or regulation and a particular requirement of same is in conflict with this policy, the state or federal law or regulation shall take precedence.

SECTION XII: OTHER CITY POLICIES

Unless specifically addressed herein, all policies adopted by the Board of Estimates relating to the procurement process remain in full force and effect. These policies include, but are not limited to: prequalification, minority and women-owned business participation, bid and surety bonds, wage rates, apprenticeship programs, and Employ Baltimore, etc.

SECTION XIII: TRANSPARENCY

.....In the interest of providing transparency to the public on the use of the design-build project delivery method, the Executive Committee shall:

1. Provide on an annual basis, not later than August 31st, a description and the status of all projects using design-build, information regarding minority- and women-owned business participation on each project, as well as implementation or policy challenges and recommendations related thereto.
2. On a quarterly basis, convene an advisory committee or public meeting of stakeholders from the contracting, architectural and engineering community and other interested parties, to hear from those stakeholders regarding policy and implementation challenges and opportunities with regard to design-build project delivery.

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